that offer service to business and residential customers. Those agreements have been implemented and those providers are operational. Ameritech also has implemented the competitive checklist, making each checklist item available to competing carriers on terms and conditions and at rates that conform to the Act and the Commission's regulations. And, as shown below, these actions taken by Ameritech to open the local exchange to competition are irreversible. In short, Ameritech has taken the steps that Congress and the Commission concluded would give other carriers an opportunity to compete in local exchange services in Michigan.

It is now time to achieve the second goal of the 1996 Act — increased competition in the concentrated long distance market. Prior to passage of the 1996 Act, those who opposed new competition in the provision of long distance services repeatedly cited hypothetical risks associated with Bell company entry into the long distance business. In the 1996 Act, Congress put an end to such speculation. Rejecting any "metric" test,[77] Congress established specific criteria for BOC entry into the long distance business. Ameritech has satisfied those criteria.

Now, as demonstrated below, there can be no doubt that Ameritech's entry into long distance is "consistent with the public interest." Ameritech's entry will bring more competitive

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77/ Congress expressly considered, and rejected, "metric" tests of competition for local services. For example, Senator Kerry proposed that competing providers of telephone exchange service must serve "a substantial number of both business and residential customers." 141 Cong. Rec. S8319 (daily ed. June 14, 1995). The amendment was tabled on a motion by Senator Stevens, who argued that such a requirement would add another burden to future competition." 141 Cong. Rec. S8321-22 (daily ed. June 14, 1995). See also 141 Cong. Rec. H8454 (daily ed. Aug. 4, 1995) (statement of Rep. Bunn) (noting that a threshold test, requiring that BOC competitors capture 10% of the local exchange business as a condition for BOC interLATA relief, was explicitly rejected by Congress). Congress, therefore, emphatically rejected the imposition of a "metric" test as a condition of interLATA authorization under Section 271. See Harris/Teece Aff., pp. 3-4.

pricing, increased choice and innovative services to consumers. And Ameritech's procompetitive entry into long distance satisfies the "public interest" requirement of Section 271(d)(3)(c) because Ameritech has complied fully with the statutory safeguards — including the competitive checklist and the separate affiliate and accounting requirements — that Congress determined were sufficient to authorize a Bell company to provide in-region long distance service.

A. The Competitive Benefits of Ameritech's Entry into Long Distance Services Are Substantial.

In passing the Telecommunications Act of 1996, Congress concluded that increasing the level of competition in all sectors of the telecommunications marketplace, including long distance, will bring enormous benefits to all consumers. Congress had it right. To ensure that the benefits of the Act flow to consumers in Michigan, the Commission should now permit Ameritech to compete with the incumbent long distance carriers for all telecommunications services.

1. The Current Concentrated Structure and Noncompetitive Performance of the Long Distance Industry.

Long distance is a business that generates over $80 billion in revenues annually and affects virtually every consumer in the United States. Although no longer a one-carrier monopoly, the long distance industry remains highly concentrated, dominated by three firms: AT&T, MCI and Sprint. See DOJ Evaluation at 3-4 ("[interLATA markets remain highly concentrated and imperfectly competitive"). AT&T currently takes in over half of the total long distance revenue in the United States, while MCI and Sprint together take in over a quarter. See FCC, Long Distance Market Shares: Fourth Quarter, 1996, Table 5. The long distance business, in short, is a "tight oligopoly" under any standard. Northern Natural Gas Co. v. Federal Power Comm'n, 399 F.2d 953, 964-65 & n.20 (D.C. Cir. 1968) (market in which share of four largest firms exceeds 50%, and share of largest firm exceeds 20%, is a "tight oligopoly") (citing C. Kaysen & D. Turner, 2A Antitrust Policy 72 (1959)). See also P. Areeda, H. Hovenkamp & J. Solow, Antitrust Law 21 (1995). Moreover, the potential harm to consumers of services produced by firms in a highly concentrated industry has become a reality in the long distance sector of the telecommunications industry.

What passes for "competition" in the long distance industry has engendered lots of advertising in recent years, but has produced little tangible benefit for consumers. See Crandall/Waverman Aff., ¶¶ 5, 7. Trends in price-cost margins — that is, the margins by which prices exceed the marginal costs of providing services — are a direct indication of an industry's competitiveness. MacAvoy Aff., ¶¶ 10, 12, 31-32, 34-36. A decline in concentration in an industry should result in a decline in price-cost margins as the industry becomes more competitive. Id. But precisely the opposite has occurred in the long distance industry. The market shares of AT&T, MCI and Sprint have declined during the period 1989-1996. Id., ¶¶ 12, 21-28. During that same period, however, the major carriers' price-cost margins have increased systematically for long distance services originating and terminating in Ameritech's service area. Id., ¶¶ 12, 47-63, 100. This inverse relationship between a significant decline in concentration in the long distance industry and a significant increase in the price-cost margins of the major carriers in the long distance industry demonstrates that the industry is still not performing in a competitive manner and that prices for long distance services are well above competitive levels. Id., ¶¶ 10, 12, 16, 39, 47-63, 100.[78] And experts estimate that the lack

[78] Moreover, the noncompetitive pricing by the major long distance carriers applies to both standard service offerings and discount plans. See MacAvoy Aff., ¶¶ 12, 64-83.

of competition in the provision of long distance services costs consumers in Michigan more than $450 million annually. Id., ¶¶ 8, 11-13, 93-99, 101.

Moreover, the harm to consumers from the failure of the major carriers to compete vigorously for long distance services goes beyond the consumer welfare losses attributable directly to noncompetitive prices. As William Baumol, an economist who frequently testifies for AT&T, has noted, there has been a significant "loss from denial or postponement of consumers' access to new communication services" that a BOC, such as Ameritech, "would or might offer but for the [interexchange] restrictions." W. Baumol & J. Sidak, Toward Competition in Local Telephony 131 (1994). The lack of competitive pressure in the long distance business "deprive[s] consumers of the benefits of increased competition," including the "achievement of cost efficiencies" and "the dynamic efficiencies from innovation." Spulber, Deregulating Telecommunications, 12 Yale J. on Reg. 25, 64-65 (1995). In short, the poor competitive performance of the long distance industry denies consumers the benefits of competitive pricing, innovative service offerings, and more efficient services. Therefore, as fundamental principles of economic theory dictate, the long distance business needs an infusion of significant new competition to force the entrenched carriers into offering more innovative services at competitive prices. Crandall/Waverman Aff., ¶¶ 3, 8; MacAvoy Aff., ¶¶ 10-13, 16, 84.

2. The Consumer Benefits of Ameritech Entry into Long Distance Telecommunications.

As the Supreme Court has noted, "unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress." Northern Pac. Ry. v. United States, 356 U.S. 1, 4 (1958).

With this principle in mind, it is simply undeniable that Ameritech's entry into long distance will increase consumer welfare. As the Commission recently determined, "the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies."[79] See DOJ Evaluation at 4 ("it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits"). The new competition that Ameritech will bring to the long distance industry will drive prices toward competitive levels, increase consumer choice, stimulate improved customer service and product innovation, and bring the benefits of advances in telecommunication services to a broader group of consumers.

To begin with, entry by Ameritech into long distance will create pressures that will drive prices in the long distance industry toward competitive levels. As studies of other concentrated industries marked by poor competitive performance demonstrate, Ameritech's entry will have a significant procompetitive impact on performance in the concentrated long-distance industry. Crandall/Waverman Aff., ¶¶ 14-59, 114-123; MacAvoy Aff., ¶¶ 8, 10-13, 84-86, 93-98. Ameritech will have to adopt procompetitive strategies to capture customers from the entrenched long distance carriers. Crandall/Waverman Aff., ¶ 122; MacAvoy Aff., ¶¶ 10, 12, 16. The incumbent long distance carriers will then be forced to adopt pro-consumer strategies — such as more competitive pricing and more attractive services — to combat the erosion of their customer base. Crandall/Waverman Aff., ¶ 120; MacAvoy Aff., ¶¶ 85, 95. This competitive

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[79] In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, Second Report and Order, and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, FCC 97-142, Third Report and Order (consol.), ¶ 92 (rel. April 18, 1997) ("BOC Non-Dominance Order").

struggle — which Congress envisioned in passing the 1996 Act — will generate enormous consumer welfare gains. MacAvoy Aff., ¶¶ 8, 10-13, 84-85, 93-101. Indeed, Professor MacAvoy estimates that Ameritech's entry into long distance in Michigan will create a $450-500 million annual benefit for Michigan consumers — in present value terms, a consumer welfare benefit of more than $5.5 billion. See also Crandall/Waverman Aff., ¶¶ 3, 5, 7-8, 113, 124 (predicting that Ameritech's entry into long distance will lead to a significant gain in consumer welfare).[80]

The experience in Connecticut offers a specific, graphic illustration of the benefits that accrue to consumers in the wake of additional long distance competition. Subsequent to the opening of the Connecticut long distance business to full competition in 1993, Southern New England Telecommunications Corporation ("SNET") and its subsidiaries began to offer both intrastate and interstate long distance service (the latter through the resale of Sprint service). See Crandall/Waverman Aff., ¶¶ 51-54. SNET's aggressive entry through the provision of "one stop shopping" for telecommunications services and innovative pricing packages enabled SNET to capture about 12% of AT&T's Connecticut revenue and reduce AT&T's share from 60% before SNET's entry to 50% by October 1996. Id., ¶¶ 51-56. In response to SNET's initiatives, AT&T launched a program of price discounts, which SNET countered with

[80] Robert Crandall and Leonard Waverman have determined, on the basis of publicly available information (most of it from AT&T itself), that (i) there is an enormous difference between the long run incremental cost of AT&T's long distance service and the revenues AT&T derives from the service; (ii) this difference is absorbed by huge — some would say "bloated" — administrative and marketing costs and excessive returns on capital; and (iii) based on what has happened in other industries and other telecommunications markets that can fairly be characterized as tightly oligopolistic in the same fashion as today's long distance business in the United States when a strong, new rival (like Ameritech) enters the fray, this "bloat" will shrink and prices will be driven toward competitive levels. Crandall/Waverman Aff., ¶¶ 5-7, 14-59, 90-100, 108, 112, 115.

innovative billing practices that further benefited Connecticut consumers. Id., ¶ 56. If the impact of additional long distance competition as experienced in Connecticut were applied to Michigan (based on very conservative assumptions[81]), consumers in Michigan would save more than $78 million per year. Id., ¶¶ 58-59.

Of course, the benefits that Ameritech's entry into long distance will bring to consumers go beyond increased price competition. Perhaps most important, Ameritech's entry into long distance will bring the benefits of increased efficiency to groups of consumers that are not the principal targets of the long distance carriers. AT&T, MCI and Sprint already are targeting high-volume, high-margin business and residential customers. When it is permitted to market local exchange and long distance services, Ameritech will bring the benefits of competition to a broader group of consumers. Ameritech's aggressive efforts to service the entire customer base undoubtedly will motivate the long distance carriers to compete more vigorously for small business and residential customers. See Harris/Teece Aff., pp. 98-99; Crandall/Waverman Aff., ¶ 116.

Moreover, market studies reveal a strong consumer demand for "one-stop shopping" — that is, a consumer preference for a single provider of both local and long distance services. See Harris/Teece Aff., pp. 20-21 (recent studies show that the vast majority of consumers prefer to purchase these telecommunications services from a single provider). Ameritech's entry into long distance will enable it to provide consumers with a wider range of choices as to where to

81/ The estimate by Crandall and Waverman of the annual benefit that Ameritech's entry into long distance would bring to consumers in Michigan based on the Connecticut experience assumes, for example, no reduction in interstate rates by the incumbent long distance carriers, no consumer gains from increases in volume stimulated by price reductions, and a very conservative post-entry market share for Ameritech. Crandall/Waverman Aff., ¶¶ 51-59.

make that "one-stop." Ameritech's entry also will permit the entrenched long distance carriers to offer unrestricted one-stop shopping and force them to pass through to consumers the benefit of the resulting marketing, billing, and customer service efficiencies. Id., pp. 99-100.

Finally, Ameritech's struggle to win long distance customers, which can be achieved only by attracting customers from the entrenched carriers, will stimulate new, competitive service offerings. As a new entrant, Ameritech will seek to improve customer service and develop innovative telecommunications services in order to satisfy existing consumer needs and create new consumer demand. Harris/Teece Aff., pp. 95-99; 101-102; Crandall/Waverman Aff., ¶¶ 3, 8, 113. Ameritech will have every incentive to bring these competitive benefits to the long distance business. It will be starting with a zero market share. To attract customers, Ameritech will have to make its offerings more attractive than those of the entrenched long distance carriers. In other words, Ameritech will have to give consumers what they want — more and better services at competitive prices. And, unlike many other actual and potential entrants into the long distance business, Ameritech is in a unique position to provide these benefits to Michigan consumers, because Ameritech brings both telecommunications expertise and significant financial resources to the competitive struggle.

* * *

As demonstrated above, the incumbent long distance carriers will be motivated to react to Ameritech's entry in a more competitive fashion. A fortiori, any further delay in Ameritech's entry into long distance will cause direct injury to the very consumers that Congress sought to benefit. All of the costs associated with the poor competitive performance of the long distance industry — including limited consumer choice and high price-cost margins — will continue to be borne by the consumers of telecommunications services. This clearly is not in the public interest.

B. The Competitive Risks of Ameritech's Entry into Long Distance Services Are Remote.

The incumbent long distance carriers have opposed the entry of the BOCs into the long distance business on the ground that the BOCs were in a position to use the local exchange "bottleneck" to discriminate against unaffiliated long distance carriers or cross-subsidize the BOC's own long distance operations. Whatever its theoretical merit in earlier years, today the argument is wholly without substance. In passing the 1996 Act, Congress established a specific framework for BOC long distance entry precisely to end this long debate. As the Commission has recognized, "[t]he Act prescribes structural and nonstructural safeguards that are intended to protect ratepayers, consumers, and competitors against the effects of potential improper cost allocation and discrimination." Accounting Safeguards Report and Order, ¶ 4.

Because of these statutory safeguards, including the competitive checklist, there is no "metric" test for entry into long distance under the 1996 Act. Rather, the test is whether the local exchange is open to competition. And under the Act, it is implementation of the competitive checklist requirements that opens the so-called "bottleneck" to competition. See Non-Accounting Safeguards First Report and Order, ¶ 205. By requiring compliance with the competitive checklist, the 1996 Act "links the effective opening of competition in the local market with the timing of BOC entry into the long distance market." Id., ¶ 8. As demonstrated above, Ameritech has fully implemented the competitive checklist requirements and complies, and will continue to comply, with the structural and non-structural provisions designed to protect against discrimination or cross-subsidy.

In addition, long before the 1996 Act was passed, Michigan had acted to open the local exchange to competition, and to foster and protect that competition as it developed. As we discuss below, these efforts of the Michigan authorities, and competitive conditions in that State, provide further protection against any potential anticompetitive conduct. Finally, in addition to these statutory and regulatory protections, there are significant technological constraints that effectively eliminate any residual concerns that Ameritech's entry into long distance might thwart competition for local or long distance telecommunications services.

1. **The Michigan Legislature and the MPSC Have Played a Leading Role in Opening the Local Exchange to Competition.**

In 1991, more than four years before Congress passed the 1996 Act, the Michigan Legislature substantially revised the Michigan telecommunication laws to remove legal and regulatory barriers to entry into the local exchange business.[82] The Michigan Act expressly authorized local competition in the provision of telecommunications services. Mich. Comp. Laws, § 484.2103.

In late 1995, the Michigan Act was amended to add an Article 3A that expressly deals with the interconnection of local exchange service providers. Among other things, the new Article required the unbundling of basic local exchange services by January 1, 1996 (Mich. Comp. Laws, § 484.2355); virtual collocation for competing providers of local exchange service (id. § 484.2356); regulations regarding the resale of basic local exchange services (id., § 484.2357); number portability (id., § 484.2358); termination of local traffic and rates therefor (id., § 484.2359); agreements regarding, and establishment of rates for, directory assistance (id.,

[82] Mich. Comp. Laws §§ 484.2101 to 484.2605, effective Jan. 1, 1992 ("the Michigan Act").

§ 484.2360); and access by competing providers to databases on a nondiscriminatory basis (id., § 484.2363). See Wilk/Fetter Aff., ¶¶ 21-22, 38-41, 45, 54-55, 66.

Pursuant to the initial Michigan Act, and thereafter to the 1995 amended version, the MPSC has conducted various proceedings addressing local competition to ensure that competitors may readily enter the local exchange business and that customers will be able to send and receive calls without changing their phone numbers, regardless of their choice of carriers.[83] On February 23, 1995, for example, the MPSC entered the City Signal/Ameritech Interconnection Opinion initially establishing, on a transitional basis, the rates, terms and conditions that governed interconnection between Ameritech, Brooks Fiber (formerly known as City Signal) and other local exchange competitors. Interconnection arrangements became available, without unreasonable discrimination, to all new providers entering the market. See City Signal/Ameritech Interconnection Opinion at 85. See Wilk/Fetter Aff., ¶¶ 78-79.

The initiatives taken by the MPSC and Ameritech to open the local exchange business in Michigan to the forces of competition were augmented, of course, by the passage of the 1996 Act and the Commission's regulations promulgated thereunder. As discussed in detail above in Sections III and IV, Ameritech has negotiated interconnection agreements with MFS, Brooks Fiber, USN and WinStar; it has completed arbitrations with AT&T, MCI, TCG and Sprint and executed interconnection agreements with AT&T, TCG and Sprint; and, most importantly, Ameritech has fully implemented the competitive checklist.

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[83] See generally In the matter of the application of CITY SIGNAL, INC., for an order establishing and approving interconnection arrangements with AMERITECH MICHIGAN, Case No. U-10647 (Mich. Pub. Serv. Comm'n Feb. 23, 1995) ("City Signal/Ameritech Interconnection Opinion").

2. Competing Providers Are Entering the Local Exchange Business in Michigan at a Rapid Pace.

As a result of the procompetitive actions already taken by this Commission, the MPSC, and Ameritech, the local exchange services business in Michigan is open to competition and competing providers are entering that business and expanding their presence at a rapid pace. Some 22 competing providers have been certified as local exchange carriers by the MPSC, and additional applications are pending.[84] Of the authorized carriers, Brooks Fiber, MFS, MCI, TCG and WinStar currently are providing facilities-based service (wireless or wireline) in Michigan. See Harris/Teece Aff., pp. 44-47. Local exchange service resellers now operating in Michigan include USN, LCI, Building Communications, Coast-to-Coast, and AT&T. See id., p. 45.

Indeed, the most powerful, sophisticated and well-financed telecommunications companies in the world, including AT&T, MCI and Sprint, are entering the local exchange business in Michigan. See Harris/Teece Aff., pp. 53-60, 80-86. The MPSC has approved arbitrated, executed interconnection agreements with AT&T and Sprint, and has rendered its decision in the Ameritech/MCI arbitration.

AT&T, for example, began offering local service in Michigan in mid-March of this year. See Harris/Teece Aff., pp. 80-81. AT&T has one of the best known brand names in the country as a result of a massive nationwide advertising budget, part of which targets Michigan. See id., p. 82. Last June, the Chairman of AT&T, Robert E. Allen, issued what The Wall Street

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[84] See Wilk/Fetter Aff., ¶ 74; Ameritech Michigan's Submission of Information in Response to Brooks Fiber, Case No. U-11104, p. 2 (Mich. Pub. Serv. Comm'n dated May 9, 1997); Harris/Teece Aff., p. 44; Ameritech MPSC Additional Submission, pp. 2-5. See also Ameritech MPSC Submission, Attachment A, Response to Question No. 1.

Journal termed a "bare-knuckled challenge" to the Bell operating companies in which Allen said that AT&T plans "to take at least a third" of the $90 billion local phone market within several years. Wall St. J., June 12, 1996, p. A3. Chairman Allen declared that AT&T is "streamlined for competition" and that it "is going after the local service market with everything we've got." Id.

To make good on this competitive challenge, AT&T is devoting substantial resources to provide local exchange service to both business and residential customers in Michigan. For example, it is building a wireless network in southeastern Michigan to provide local service in 1997. See Harris/Teece Aff., p. 81. In August 1996, AT&T signed an agreement with TCG, under which TCG provides local network access to AT&T in 9 markets, including the greater Detroit metropolitan area. See id., pp. 62-63. More recently, AT&T and Brooks Fiber entered a similar, national agreement under which AT&T will use Brooks Fiber for the origination and termination of calls. See id., pp. 52-53. These agreements will enable AT&T to bypass Ameritech's local network by diverting its traffic to TCG or Brooks Fiber. See Gilbert/Panzar Aff., ¶ 73.

MCImetro, a wholly-owned subsidiary of MCI, began offering facilities-based local service to business customers in Detroit in June 1996. See Harris/Teece Aff., p. 54. With 60 route-miles of SONET-based network, extensive switching capabilities, and offices and operations across Michigan, MCImetro has made a substantial investment in its local exchange network in the State. Id. It has arranged with Ameritech in the Detroit area to exchange local traffic and is currently offering local exchange service to Detroit businesses (especially those with offices in buildings that are already on MCI's SONET network). MCImetro's initial local service products include basic local exchange service, business lines (including a "feature rich" line provisioned like Centrex), private branch exchange ("PBX") trunks and access services to businesses. Id., pp. 54-56. MCImetro frequently has trumpeted its plans to offer local service to residential customers in various parts of the country. Id., pp. 58-59.

With the addition of local services, MCI, already a provider of long distance service, has begun marketing an integrated package of services to businesses, "networkMCI One," including local, long distance and international services, plus additional services, such as cellular, internet access, paging data services and conferencing. Detroit is one of 13 markets where networkMCI One is available today. See id., pp. 56-57.[85]

Sprint, the third largest interexchange carrier in the United States, also provides local exchange service. Sprint's local telephone operations, which serve 6.8 million residential and business customers in 19 states, adopted the Sprint name in May 1996. See id., p. 85. With annual revenues of $12.8 billion, and with its PCS authorizations and alliances with cable television system owners (TCI, Comcast Corporation, and Cox Communications) and competitive access providers (including TCG), Sprint is very well positioned to compete in the era of integrated telecommunications services. Id., pp. 85-86.

Other prominent entrants into the Michigan local exchange services business, described in detail in Section III.C, supra, include Brooks Fiber, TCG, and MFS, an affiliate of MFS/Worldcom, the fourth largest facilities-based long distance company in the United States. See id., pp. 48-53, 60-66. Facilities-based wireless transport services are provided by WinStar (see id., pp. 45, 74-75), another company with which Ameritech has an interconnection

[85] As the Commission is aware, Ameritech has recently filed a complaint with the Commission challenging some of MCI's marketing practices on the ground that they violate the joint marketing restrictions of Section 271(e) of the Act.

agreement. And MFS, Brooks Fiber and WinStar are providing "one-stop shopping" for local and long distance service for Michigan customers. See id., pp. 51, 65.

A number of providers in Michigan already have established a significant presence by providing telecommunications services along with cable television service through agreements with owners of large multi-dwelling units ("MDUs"), including apartment buildings and condominiums. See id., pp. 66-70. Ameritech's competitors, including GE Capital-Res Com, People's Choice TV and Brooks Fiber, have negotiated telecommunications service contracts with large real estate owners, providing springboards for integrated service offerings that combine local service, long distance service, cable television and a variety of vertical features. Id.

In addition to the competing carriers that are actually providing local service, several others (including LCI International, Continental Cablevision, BRE Communications, Comcast Telephony, Comcast MH Telephony, Coast-To-Coast Telecommunications, Inc., Tele-Phone Communications, Cypress Telecommunications, Building Communications, KMC Telecommunications, MidCOM Communications, and A.R.C. Networks) have been licensed by the MPSC to provide local service, and other applications are pending before the MPSC (including those of Michigan Independent Networks, Polycom America, and Image Paging of Michigan).[86/] Continental Cablevision, for example, which has been acquired by US West, is expected to begin providing local telecommunications services in 1997 to both business and residential customers in 44 Michigan communities, including several in the Detroit area.[87/]

86/ See Wilk/Fetter Aff., ¶ 74; Ameritech MPSC Submission, Attachment A, Response to Question No. 1; Ameritech MPSC Additional Submission, pp. 2-5.

87/ See Ameritech MPSC Submission, Attachment A, Response to Question No. 2, p. 4; Harris/Teece Aff., pp. 90-91.

Its cable network in the area passes 465,000 homes that the company hopes to hook up to its telecommunications service. See Harris/Teece Aff., p. 90. The company currently is upgrading its cable TV network with fiber optic cables. Id., pp. 90-91.

In short, the implementation by Ameritech of the competitive checklist, in conformity with the Commission's interconnection regulations and in the context of the MPSC's longstanding procompetitive policies, has opened the local exchange to competition. As a result, numerous competing providers, including AT&T, already have entered the local exchange business in Michigan, and other competitors are poised to enter on a large scale. The local exchange business in Michigan clearly is open to competition.[88/]

3. The 1996 Act, and Regulatory and Technological Constraints, Make it Virtually Impossible for Ameritech to Impede Competition in Long Distance Services.

As demonstrated above, Ameritech has complied with the Telecommunications Act of 1996 and implemented the applicable orders of the Commission and the MPSC. As a result, other telecommunications carriers are free to provide local exchange services in Michigan and, as discussed above, are already doing so. In this section, we demonstrate how statutory and regulatory safeguards, in addition to technological constraints, make it virtually impossible for Ameritech to use its position in local exchange services to obstruct competition in the provision of long distance services.

88/ Brooks Fiber is particularly enthusiastic about the growth of its local exchange business in Michigan. It recently reported that its financial results for Grand Rapids "continued to exceed our original expectations," with annualized revenues for the first quarter of 1997 increasing 33% over the fourth quarter of 1996. Brooks News, "Brooks Fiber Properties Reports Record First Quarter Revenues," p. 2 (April 28, 1997). Brooks Fiber's EBITDA increased 58% for the first quarter. Id. Brooks Fiber stated that these "positive results" represent "a clear indication of the economic opportunity in switched services on a national basis." Id.

a. Safeguards Against Cross-Subsidization

Any assessment of the risk that Ameritech could use cross-subsidization to impede competition in long distance services should begin with a dose of economic common sense. Ameritech's long distance affiliate — which would begin with no customers — could not obtain market power in long distance services through cross-subsidization unless cross-subsidization would enable it to (1) embark on a predatory pricing scheme that would drive AT&T, MCI and Sprint out of long distance, and (2) then raise long distance prices significantly above competitive levels without losing significant sales.[89/] As the Commission recently said, a BOC could gain an unfair advantage from improper cost allocation only if it enabled the BOC's long distance affiliate "to set retail interLATA prices at predatory levels."[90/] Further, the Supreme Court has noted that, even in unregulated industries, such "predatory pricing schemes are rarely tried, and even more rarely successful."[91/] With these principles in mind, Ameritech obviously could not undertake a successful predation scheme against the entrenched long distance carriers, especially given the regulatory oversight to which it is subject.

AT&T, MCI and Sprint currently earn the vast bulk of long distance revenue in the United States. These carriers have massive investments in network infrastructure, low incremental operating costs and substantial financial resources (including high operating margins) with which to combat any predation scheme. Ameritech, by contrast, will be a new entrant with

89/ See United States v. Western Electric Co., 900 F.2d 283, 296 (D.C. Cir.), cert. denied, 498 U.S. 911 (1990).

90/ BOC Non-Dominance Order, ¶ 103.

91/ Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 589 (1986).

zero market share in a business in which every customer already has a carrier. As the Commission recently explained, the big interexchange carriers

> are large well-established companies with millions of customers throughout the nation. It is unlikely, therefore, that a BOC interLATA affiliate, whose customers are likely to be concentrated in the BOC's local service region, could drive one or more of these national companies from the market. Even if it could do so, it is doubtful that the BOC interLATA affiliate would later be able to raise prices in order to recoup lost revenues.[92]

Under these circumstances, the Commission concluded, "it is unlikely that a BOC interLATA affiliate could engage successfully in predation."[93] It should come as no surprise, then, that, even prior to the 1996 Act, AT&T candidly acknowledged that "there is little reason to fear that Ameritech could monopolize the interexchange market — driving AT&T, MCI and Sprint out of business."[94]

It is clear, therefore, that Ameritech could not undertake a successful "cross-subsidy/predation" scheme against the incumbent long distance carriers. It is equally clear that the Act and this Commission's rules ensure that Ameritech could not use revenue from non-competitive services to subsidize its entry into long distance. Indeed, Section 254(k) of the Act, which prohibits subsidization of competitive services, ensures that Ameritech cannot misallocate costs or cross-subsidize its long distance services. In addition, under Section 272

92/ BOC Non-Dominance Order, ¶ 107.

93/ Id. See also Gilbert/Panzar Aff., ¶¶ 20, 78-81 (analyzing why Ameritech could not recover the significant costs it would incur in any attempted predation scheme).

94/ Comments of AT&T in Response to Ameritech's Motions to Remove the Decree's Interexchange Restriction, p. 26 (filed with the Department of Justice, Feb. 15, 1994). As AT&T's expert economist, Professor Sullivan, acknowledged, "[n]or is there anything to suggest that any market participant has (or is in a position to) price in a predatory manner — that is to set prices below incremental costs with the expectation of recouping consequent losses through monopoly prices once competitors have been disciplined or dispatched." Id., App. C at 14-15.

of the Act, Ameritech will be able to provide in-region long distance service only through ACI, its separate affiliate. ACI must comply with the structural and transaction requirements of Section 272, including Commission-prescribed cost allocation rules and accounting safeguards. As the Commission has recognized, this structural separation requirement and the Commission's cost allocation and accounting rules "will effectively prevent predatory behavior that might result from cross-subsidization."[95]

Moreover, cross-subsidization is unlawful under Michigan's regulatory scheme. See Wilk/Fetter Aff., ¶¶ 39-42 (discussing how the Michigan Telecommunications Act specifically prohibits use of local exchange revenues to cross-subsidize other products or services offered by Ameritech or an affiliate). Thus, monitoring by the MPSC, which is armed with significant enforcement authority (see id., ¶¶ 45-49), will overlap with similar monitoring by competitors and the Commission to protect against any possible risk of cross-subsidization. Furthermore, Ameritech could not increase its rates for local exchange services (which are subject to price caps), a necessary step in any cross-subsidization scheme to deploy below-cost rates for long distance services, without satisfying the formidable conditions required for MPSC approval of a rate increase. See id., ¶¶ 54-57.

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[95] Accounting Safeguards Report and Order, ¶ 28. See also Non-Accounting Safeguards First Report and Order, ¶ 167. Moreover, under regulations that pre-date the 1996 Act, improved accounting requirements mandated by the Commission's rules further reduce the risk that any cost misallocation scheme would go undetected. As the court noted in United States v. Western Elec. Co., 993 F.2d 1572, 1580-81 (D.C. Cir.), cert. denied, 510 U.S. 984 (1993), the Commission "has acted since the break-up [of AT&T] to tighten its accounting rules, especially its treatment of joint costs, all tending to increase the chances of catching any attempts at cost-shifting." The Commission now has concluded that its "existing accounting safeguards . . . prevent subsidization of competitive nonregulated services." Accounting Safeguards Report and Order, ¶ 275.

Finally, Section 272(d)(1) of the Act mandates an audit every two years "to determine whether [a BOC] has complied" with the separate affiliate safeguards, and the audit results will be open to public inspection and public comment before the Commission and the relevant state regulatory body. See Section 272(d)(2). As the Commission has noted, this oversight will permit the Commission and the states to determine whether Ameritech has, in fact, complied with Section 272 of the Act and the Commission's accounting and cost allocation rules. Accounting Safeguards Report and Order, ¶ 197.

The normal market protection against a "cross-subsidy/predation" scheme — combined with the separate affiliate requirements of the Act, the Commission's accounting rules and monitoring by regulators — makes it virtually impossible for Ameritech to engage in any undetected cross-subsidization scheme.[96] In addition, Ameritech could not use interexchange access revenues to cross-subsidize long distance rates because under the Commission's pure price cap regulation, which applies to Ameritech, there is nothing to be gained by doing so.[97] Price cap regulation "eliminates the incentive to shift costs to regulated services from nonregulated services,"[98] because any "increase in costs for the regulated activity does not automatically

96/ See BOC Non-Dominance Order, ¶ 105 ("these safeguards will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur").

97/ The Commission's interim rules permit local exchange carriers such as Ameritech to choose "pure" price cap regulation. In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1 (March 30, 1995). Ameritech has elected pure price cap regulation under the revised Commission rules. Ameritech described its election in its Petition for Clarification or Waiver, In the Matter of Annual 1995 Access Tariff Filing (FCC May 9, 1995).

98/ In re Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order, 4 F.C.C.R. 2873, 2924 (April 17, 1989).

cause an increase in the legal rate ceiling."[99] As the Commission recently explained, "federal price cap regulation reduces a BOC's incentives to allocate costs improperly."[100] See Gilbert/Panzar Aff., ¶¶ 61-63.

In sum, there is no credible basis for a claim that Ameritech could use cross-subsidization to impede competition in long distance services.

b. Safeguards Against Discrimination

As with cross-subsidization, there are numerous barriers to any attempt by Ameritech to impede competition in long distance services by discriminating against competing providers of long distance services. These include statutory and contractual safeguards, as well as numerous technical barriers to anticompetitive discrimination.

(1) Statutory and Contractual Safeguards

Long before the 1996 Act, the Commission required all local exchange carriers to provide interexchange carriers and competitive access providers with unhindered, fairly-priced access both to end user customers and to the local exchange network.[101] The 1996 Act

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[99] United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993). See also National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993) (explaining that under price cap regulation there is no longer "any reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices"); BOC Non-Dominance Order, ¶ 91 (explaining that "a BOC's ability to engage in a 'price squeeze' by raising its prices for access services . . . is limited by price cap regulation of those services").

[100] Non-Accounting Safeguards First Report and Order, ¶ 181.

[101] The Commission's equal access rules apply to all carriers, including local carriers affiliated with interexchange carriers. See In the Matter of Application for consent to Assignment of Licenses and Transfer of Control of Certain Subsidiaries of GTE Corp. and United Telecommunications, Inc. to U.S. Sprint Communications Co., 1986 FCC LEXIS 3223, ¶ 16 (June 18, 1986); In re Puerto Rico Tel. Co. Equal Access Conversion Schedule, 5 F.C.C.R. 118 (1989) (entry of local carrier into long distance market).
(continued...)

expands the protections against any risk that Ameritech might impede competition in long distance services by discriminating against other long distance providers, such as AT&T, MCI and Sprint.

Section 272(c)(1) provides that, in its dealings with its separate long distance affiliate, Ameritech "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." In addition, Section 272(e) imposes detailed nondiscrimination requirements on Ameritech — safeguards that require Ameritech to make telephone exchange service and exchange access, as well as other facilities, services, and information,[102] available on a nondiscriminatory basis. Kriz Aff., ¶¶ 5-30; Mickens Aff., ¶¶ 116-120. Furthermore, additional detailed nondiscrimination requirements are imposed on Ameritech by the Michigan Telecommunications Act. See Wilk/Fetter Aff., ¶ 65.

Moreover, Sections 251 and 252 of the Act mandate nondiscriminatory access and interconnection to all providers of telecommunications services. Indeed, Ameritech cannot enter the long distance business unless it satisfies the "nondiscriminatory access" requirements of the competitive checklist. See Section 271(c)(2)(B). As the Commission has observed, these safeguards "are designed to ensure that incumbent LECs do not discriminate in opening their

[101](...continued)
Under the 1996 Act, such regulations remain in force until superseded by the Commission.

[102] The Commission already has issued regulations governing the sharing of information regarding network changes between BOCs and their long distance affiliates. See 47 C.F.R. §§ 51.325-51.335.

bottleneck facilities to competitors."[103/] And there is every reason to expect that these safeguards will be effective. See Gilbert/Panzar Aff., ¶¶ 79-80. Furthermore, the cost-based pricing standard prescribed by Section 252(d) provides further protection against discrimination.

Perhaps most important, Ameritech's statutory nondiscrimination obligations are not abstractions. The contractual interconnection obligations that Ameritech has undertaken, pursuant to both Section 252 negotiations and arbitrations, require it to provide network interconnection, unbundled network elements, resold services, local transport and termination, collocation and access to rights-of-way in a nondiscriminatory manner. These agreements embody concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impose penalties for noncompliance. See Mickens Aff., passim. These agreements also require Ameritech to maintain performance records and to generate monthly reports that enable competing carriers, as well as regulatory authorities, to monitor Ameritech's compliance with these standards and benchmarks. Id., ¶¶ 23-29. These reporting requirements "will collectively minimize the potential for anticompetitive conduct by the BOC." Non-Accounting Safeguards First Report and Order, ¶ 327. Moreover, these standards, benchmarks and reporting requirements have been carefully reviewed and approved during Section 252 arbitrations by the MPSC. Any attempt by Ameritech to deviate from its nondiscrimination obligations to carriers, including incumbent long distance carriers, in the local exchange sector would be readily detected by those carriers and regulators. See Wilk/Fetter Aff., ¶¶ 70-72.

103/ Non-Accounting Safeguards First Report and Order, ¶ 205. It should be noted that, even before the 1996 Act, the courts had recognized that the Commission's enforcement of regulatory safeguards had proven effective in detecting and deterring any anticompetitive conduct by the BOCs. See United States v. Western Elec. Co., 993 F.2d 1572, 1580-81 (D.C. Cir. 1993).

(2) Technical Barriers to Discrimination

Technical constraints reinforce the statutory, regulatory and private contractual barriers to discriminatory conduct by Ameritech. Even if Ameritech were otherwise inclined to discriminate against one or more unaffiliated carriers, it does not possess the technical capability to engage in a systematic pattern of discrimination. The assigning, provisioning, maintenance and repair of local exchange facilities today are almost totally automated. Ameritech's mechanized systems are blind to the identity of the customer because they assign circuit components based on one factor only — whether the components meet the technical requirements of the service. See Kocher Aff., ¶¶ 6-39.

Moreover, even if Ameritech could discriminate against competing long distance carriers, the likelihood that it would benefit from such discrimination is remote. There is simply no reason to assume that the end user customers victimized by the resulting service problems would switch their long distance services to ACI. A customer dissatisfied with AT&T, for example, would be just as likely to switch to MCI, Sprint or one of the other carriers serving Michigan as it would to Ameritech's affiliate. This point is critical, because discrimination would benefit Ameritech only if it caused large numbers of customers to switch from the other long distance carriers to Ameritech's long distance affiliate.

c. Private and Public Enforcement Reinforces the Safeguards Against Any Risk to Competition in Long Distance Services.

As demonstrated above, there are numerous market, statutory, regulatory and technical barriers to any attempt by Ameritech to impede competition in long distance services. These restrictions prevent Ameritech from engaging in undetected anticompetitive behavior, thereby depriving Ameritech of any incentive to undertake such conduct in the first instance. Any suggestion that Ameritech's entry into long distance be delayed notwithstanding full compliance with the statutory safeguards against competitive risks because such entry might create competitive risks defies logic. More important, it flies in the face of Congress' intent — the 1996 Act imposed those safeguards precisely for the purpose of facilitating Bell Company entry into long distance.[104]

In any event, were Ameritech to engage in futile anticompetitive conduct, detection and punishment of that conduct would be both swift and inevitable. To begin with, the long distance carriers use aggressive "vendor management" programs to monitor with great precision virtually every aspect of the access services provided to them, including circuit failure rates, installation intervals and repair intervals. AT&T, for example, uses an "Access Supplier Assessment" report to measure in precise detail the performance of Ameritech as a supplier to AT&T and to compare that performance to both AT&T's expectations and the performance of other Bell companies. See Gilbert/Panzar Aff., ¶ 31. And, as noted above, the interconnection agreements into which Ameritech has entered in Michigan set forth concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and require Ameritech to maintain performance records and to generate monthly reports that enable competing carriers, as well as regulatory authorities, to monitor Ameritech's compliance with the standards and benchmarks. See Mickens Aff., passim.

These private monitoring programs, of course, are enhanced by regulatory reporting requirements. BOCs must file with the Commission, inter alia, Standards of Service Reports,

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[104] Thus, an inquiry based on such a "public interest" provision may not become an excuse "to embark on a fishing expedition for any anticompetitive practices in some way arguably related" to the issues at hand. Equipment Distributors' Coalition, Inc. v. FCC, 824 F.2d 1197, 1202 n.2 (D.C. Cir. 1987).